

## § 160.18

statute, regulation, order or interpretation is not inconsistent with the provisions of this part if the protection such statute, regulation, order or interpretation affords any person is greater than the protection provided under this part, as determined by the Bureau of Consumer Financial Protection, after consultation with the Commission, on its own motion or upon the petition of any interested party.

[66 FR 21252, Apr. 27, 2001, as amended at 76 FR 43879, July 22, 2011]

### § 160.18 Effective date; compliance date; transition rule.

(a) *Effective date.* This part is effective on June 21, 2001. In order to provide sufficient time for you to establish policies and systems to comply with the requirements for this part, the compliance date for this part is March 31, 2002.

(b)(1) *Notice requirement for consumers who are your customers on the effective date.* By March 31, 2002, you must have provided an initial notice, as required by § 160.4, to consumers who are your customers on March 31, 2002.

(2) *Example.* You provide an initial notice to consumers who are your customers on March 31, 2002 if, by that date, you have established a system for providing an initial notice to all new customers and have mailed the initial notice to all your existing customers.

(c) *One-year grandfathering of service agreements.* Until March 31, 2003, a contract that you have entered into with a nonaffiliated third party to perform services for you or functions on your behalf satisfies the provisions of § 160.13(a)(1)(ii) even if the contract does not include a requirement that the third party maintain the confidentiality of nonpublic personal information, as long as you entered into the agreement on or before March 31, 2002.

[66 FR 21252, Apr. 27, 2001, as amended at 66 FR 24061, 24183, May 11, 2001; 67 FR 6790, Feb. 13, 2002]

### §§ 160.19–160.29 [Reserved]

### § 160.30 Procedures to safeguard customer records and information.

Every futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity

## 17 CFR Ch. I (4–1–12 Edition)

pool operator, introducing broker, major swap participant, and swap dealer subject to the jurisdiction of the Commission must adopt policies and procedures that address administrative, technical and physical safeguards for the protection of customer records and information.

[76 FR 43879, July 22, 2011]

## PART 162—PROTECTION OF CONSUMER INFORMATION UNDER THE FAIR CREDIT REPORTING ACT

Sec.

162.1 Purpose and scope.

162.2 Definitions.

### Subpart A—Business Affiliate Marketing Rules

162.3 Affiliate marketing opt out and exceptions.

162.4 Scope and duration of opt out.

162.5 Contents of opt-out notice; consolidated and equivalent notices.

162.6 Reasonable opportunity to opt out.

162.7 Reasonable and simple methods of opting out.

162.8 Acceptable delivery of opt-out notices

162.9 Renewal of opt out.

162.10–162.20 [Reserved]

### Subpart B—Disposal Rules

162.21 Proper disposal of consumer information.

### APPENDIX A TO PART 162—SAMPLE CLAUSES

AUTHORITY: Sec. 1088, Pub. L. 111–203; 124 Stat. 1376 (2010).

SOURCE: 76 FR 43884, July 22, 2011, unless otherwise noted.

### § 162.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to implement various provisions in the Fair Credit Reporting Act, 15 U.S.C. 1681, *et seq.* (“FCRA”), which provide certain protections to consumer information.

(b) *Scope.* This part applies to certain consumer information held by the entities listed below. This part shall apply to futures commission merchants, retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers,

major swap participants and swap dealers, regardless of whether they are required to register with the Commission. This part does not apply to foreign futures commission merchants, foreign retail foreign exchange dealers, commodity trading advisors, commodity pool operators, introducing brokers, major swap participants and swap dealers unless such entity registers with the Commission. Nothing in this part modifies limits or supersedes the requirements set forth in part 160 of this title.

(c) *Examples.* The examples in this part are not exclusive. Compliance with an example, to the extent applicable, constitutes compliance with this part. Examples in a section illustrate only the issue described in the section and do not illustrate any other issue that may arise in this part.

#### § 162.2 Definitions.

(a) *Affiliate.* The term “affiliate” for the purposes of this part means any person that is related by common ownership or common corporate control with a covered affiliate.

(b) *Clear and conspicuous.* The term “clear and conspicuous” means reasonably understandable and designed to call attention to the nature and significance of the information presented in the notice.

(c) *Common ownership or common corporate control.* The term “common ownership or common corporate control” for the purposes of this part means the power to exercise a controlling influence over the management or policies of a company whether through ownership of securities, by contract, or otherwise. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of any company is presumed to control the company. Any person who does not own more than 25 percent of the voting securities of a company will be presumed not to control the company.

(d) *Company.* The term “company” means any corporation, limited liability company, business trust, general or limited partnership, association, or similar organization.

(e) *Concise.*—

(1) *In general.* The term “concise” means a reasonably brief expression or statement.

(2) *Combination with other required disclosures.* A notice required by this part may be concise even if it is combined with other disclosures required or authorized by Federal or state law.

(f) *Consumer.* Except as otherwise provided, the term “consumer” means an individual person. The term consumer does not include market makers, floor brokers, locals, or individual persons whose information is not collected to determine eligibility for personal, family, or household purposes.

(g) *Consumer information.* The term “consumer information” means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report (as defined in section 603(d)(2) of the FCRA). Consumer information also means a compilation of such records. Consumer information does not include information that does not identify individuals, such as aggregate information or blind data.

(h) *Covered affiliate.* The term “covered affiliate” means a futures commission merchant, retail foreign exchange dealer, commodity trading advisor, commodity pool operator, introducing broker, major swap participant or swap dealer, which is subject to the jurisdiction of the Commission.

(i) *Dispose or Disposal.*—

(1) *In general.* The terms “dispose” or “disposal” means:

(i) The discarding or abandonment of consumer information; or

(ii) The sale, donation, or transfer of any medium, including computer equipment, upon which consumer information is stored.

(2) *Sale, donation, or transfer of consumer information.* The sale, donation, or transfer of consumer information is not considered disposal for the purposes of subpart B.

(j) *Dodd-Frank Act.* The term “Dodd-Frank Act” means the Dodd-Frank Wall Street Reform and Consumer Protection Act (Pub. L. 111-203, 124 Stat. 1376 (2010)).

(k) *Eligibility information.* The term “eligibility information” means any information that would be a consumer